

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Economic Development

AGENDA DATE: November 16, 2010 Regular Agenda

CONTACT PERSON/PHONE: Kathryn Dodson, PhD, Director 541-4670

DISTRICT(S) AFFECTED: ALL

SUBJECT:

Discussion and action on a Resolution that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and River Oaks Properties, Ltd, a Texas limited liability company ("Applicant"), to provide for a grant from the City to the Applicant in an amount not to exceed \$216,500.00 in connection with the Applicant's removal of the blighted conditions and the redevelopment of the approximately 15.3-acre property located at 5631 and 5719 Dyer Street in El Paso, Texas, subject to the terms and conditions provided in the Agreement. [General Fund] (District 2)
[Economic Development, Kathryn Dodson (915)541-4670]

BACKGROUND/DISCUSSION:

In an effort to remove blight from the area, the City can execute a Chapter 380 Economic Development Program Agreement with River Oaks Properties, Ltd, to provide a grant of \$216,500 to demolish the property on Dyer Street, informally known as the El Paso Discount Mall. Under the 380 Agreement, grant money will come from rebated ad valorem taxes the property is expected to generate with a new development on the space. The new development is contractually obligated to contain retail and grocery components and will provide new jobs to the area. As additional consideration for this, River Oaks will offer for sale to the City the property at 601 N. Oregon, as specified in the Contract of Sale in Exhibit D of the attached document.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

\$216,500 (General Fund)

BOARD/COMMISSION ACTION:

The Economic and Community Development/Quality of Life and Tourism Legislative Review Committee recommended that the item be brought to City Council without a recommendation from the LRC.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Department Head

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and River Oaks Properties, Ltd, a Texas limited liability company, ("Applicant") to provide for a grant from the City to the Applicant in an amount not to exceed \$216,500.00 in connection with the Applicant's removal of the blighted conditions and the redevelopment of the approximately 15.3-acre property located at 5631 and 5719 Dyer Street in El Paso, Texas, subject to the terms and conditions provided in the Agreement.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn B. Dodson, Ph.D., Director
Planning & Economic

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (“City”), a Texas home rule municipal corporation, and **RIVER OAKS PROPERTIES, LTD** (“Applicant”), a Texas limited partnership, for the purposes and considerations stated below:

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”); and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to Applicant to remove the current blighted condition of that certain real property being more particularly described in **Exhibit “A”** (the “Property”) for the purpose of causing the redevelopment of the Property in the manner more fully described in this Agreement, that will serve as an economic stimulus in the City of El Paso; and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City determines that a grant of funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City and Applicant desire the removal of the blighted conditions on the Property occur and that better, more productive use be made of that Property; and

WHEREAS, the removal of the blighted conditions and redevelopment of the Property in the manner more fully described in this Agreement will encourage increased economic development in the City, provide significant increases in the City's property tax revenues, and improve the City's ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible “program” and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Applicant.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word "Applicant" means **River Oaks Properties, Ltd**, a Texas limited partnership.
- C. **City.** The word "City" means the City of El Paso, Texas.
- D. **Development.** The word "Development" means the Site Preparation Work and redevelopment of the Property as more fully described on **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes.
- E. **Grant.** The word "Grant" means a one-time lump sum payment to Applicant in the total amount specified under the terms of this Agreement and which will be payable from the City's general revenue fund.
- F. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to City as a condition of receipt of the Grant, with such documentation more fully described in **Exhibit "C"**, which is attached hereto and incorporated herein for all purposes.
- G. **Property.** The word "Property" means approximately 15.310 acres of real property located at 5631 and 5719 Dyer Street, El Paso Texas, more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference.
- H. **Qualified Expenditures.** The words "Qualified Expenditures" means those costs incurred by Applicant in the Site Preparation Work to be performed on the Property for the Development.
- I. **Site Preparation Work.** The words "Site Preparation Work" mean demolition and removal from the Property of (i) buildings, appurtenances, including foundations, presently situated on the Property, and (ii) all related improvements that the City has reasonably determined are necessary to render the Property to a standard developable site condition that is in conformance with all applicable federal, state, and local laws, rules, and regulations, as more specifically described in **Exhibit "B"**.

SECTION 2. TERM.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as such term is defined in Section 8 below) and shall terminate on the first to occur of: (i) five (5) years from the Effective Date, plus such additional time thereafter as may be due to permitted deadline extension(s) pursuant to the procedures described in Sections 3 and 5

below; (ii) upon payment of the Grant to Applicant; or (iii) the termination of this Agreement in accordance with the applicable provisions contained herein.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

A. Development.

(1) Applicant agrees to perform or cause to be performed the Site Preparation Work and represents, warrants, covenants and agrees that following substantial completion of the Site Preparation Work the Property will be sold in fee simple to only a subsequent purchaser (the "successor-in-title") who represents to Applicant's satisfaction that it will develop, construct, and operate the Development in the manner described in this Agreement and use its best efforts to have the Development open for business to the general public within **TWO (2)** months from issuance of a Certificate of Occupancy for the Development.

(2) Applicant shall: (i) commence Site Preparation Work within **TWELVE (12)** months after the Effective Date; and (ii) substantially complete the Site Preparation Work within **SIX (6)** months following the commencement of Site Preparation Work; provided however, if within ten (10) business days prior to expiration of either performance deadline stated herein, Applicant submits to the City a written request for extension along with a reasonable justification for the delay, the affected performance deadline will automatically extend by an additional ninety (90) days without written amendment to this Agreement. For the purposes of this Agreement, references to "substantial completion," "substantially complete" and similar terms with respect to the Site Preparation Work shall mean that Applicant has completed the demolition of the existing buildings situated on the Property as of the Effective Date, the demolition of the foundations of such buildings and the removal and proper disposal from the Property of demolished materials.

(3) Applicant agrees that it shall make Qualified Expenditures of not less than **FOUR HUNDRED THIRTY-THREE THOUSAND AND NO/100 DOLLARS (\$433,000.00)**; provided however, that if Applicant fails to make Qualified Expenditures on the Property at the minimum amount designated herein, Applicant shall not be deemed to be in default under this Agreement, but the amount of the Grant shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than \$433,00.00. Applicant shall submit to the City such documentation as may be reasonably necessary to verify the expenditures of Qualified Expenditures for the Site Preparation Work, as specifically described in **Exhibit "B"**.

B. Amount of Grant. The Grant amount payable by the City under this Agreement, if any, shall be **TWO HUNDRED SIXTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$216,500.00)**, subject to reduction as specified in Section 3(A)(3) above.

C. Disbursement of Grant.

- (1) Subject to the limitations stated in this Section 3(C), Applicant will be eligible to receive the Grant payment after Applicant's successor-in-title has received a Certificate of Occupancy for the Property and the Development is open for business to the general public.
- (2) Eligibility for the Grant payment is expressly contingent upon Applicant's satisfaction of the requirements of Sections 3 and 4 of this Agreement.
- (3) Under no circumstances shall the City be required to disburse under this Agreement more than TWO HUNDRED SIXTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$216,500.00), nor shall Applicant be entitled to receive the Grant until it satisfies all the requirements of Sections 3 and 4 of this Agreement.
- (4) In order to receive the disbursement of the Grant, Applicant will submit a Grant Submittal Package, as specified in Section 3(D) below.

D. Grant Submittal Package.

- (1) Unless otherwise agreed by the City and Applicant in writing, Applicant shall submit a Grant Submittal Package in the form attached hereto as **Exhibit "C"** together with the requisite documentation. The Grant Submittal Package must be submitted no later than **THIRTY EIGHT (38)** months following the Effective Date; provided however, if within ten (10) business days prior to expiration of the submittal deadline stated herein, Applicant submits to the City a written request for extension along with a reasonable justification for the delay, the City Manager or designee may by written notice to the Applicant extend the submittal deadline for an additional twelve (12) months.
- (2) Prior to the submittal of the Grant Submittal Package Applicant will submit to the City documentation as may be reasonably necessary to verify the expenditure of Qualified Expenditures for the Site Preparation Work (i.e., invoices marked "paid" to third parties or other similar verifiable documentation and not reimbursed by any other governmental entity, as reasonably required by the City).
- (3) If Applicant fails to timely submit the Grant Submittal Package, the City may give Applicant written notice of its failure to timely submit the Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. The City's determination of the amount of the Grant payment due to Applicant is final; provided, however, that the Applicant may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal, in which event the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 6 of this Agreement.

- E. **Payment of Taxes.** Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Property, so long as Applicant is the owner of the Property, and on any other property Applicant owns within the City of El Paso, except where Applicant is prevented from doing so as a result of lack of notice thereof from the El Paso Consolidated Tax Office. Applicant shall have the right to contest the appraised value of the Property as provided by law.

SECTION 4. OTHER CONSIDERATION

A. **Saddleblanket Property.**

(1) In consideration of the City's willingness to enter into this Agreement, the Applicant hereby offers to sell to the City for the purchase price of ONE MILLION TWO HUNDRED SIXTY TWO THOUSAND ONE HUNDRED FOURTEEN AND 98/100 DOLLARS (\$1,262,114.98) certain real property located in El Paso County, Texas, being legally described as follows:

Lots 1 through 10, both inclusive, Block 1, SATTERTHWAITE ADDITION, and Addition to the City of El Paso, El Paso County, Texas; also known and numbered as 601 N. Oregon Street, El Paso, Texas (the "Saddleblanket Property").

(2) Contemporaneous with the execution of this Agreement, the City and Applicant have executed a purchase and sale contract for the City's purchase of the Saddleblanket Property, said purchase and sale contract being attached hereto as **Exhibit "D"** and incorporated by reference herein. The parties represent that it their intent that within **NINETY (90)** calendar days of the Effective Date of this Agreement, City and Applicant will close on the real estate transaction described therein.

(3) If the City fails to acquire the Saddleblanket Property through no fault of the Applicant, such failure will have no affect on the City's obligations under this Agreement.

SECTION 5. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), City shall comply with the following terms and conditions:

- A. The City agrees to process the Grant Payment to Applicant within ninety (90) days after its approval of the Applicant's Grant Submittal Package.
- B. Applicant will be eligible to receive the Grant payment after Applicant's successor-in-title has received a Certificate of Occupancy for the Property and the Development is open for business to the general public and upon Applicant's satisfaction of the requirements of Sections 3 and 4 of this Agreement.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Commence or Substantially Complete.** Applicant's failure or refusal to commence the Site Preparation Work or failure or refusal to substantially complete the Site Preparation Work within the time periods specified in Section 3 of this Agreement, as may be extended, and Applicant's failure or refusal to cure the same within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence but Applicant fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed events of default.
- B. **Failure to Convey the Property.** Applicant's failure or refusal to convey the Property to a successor-in-title who has warranted and represented that it will develop, construct, and operate the Development in the manner described in this Agreement and Applicant's failure or refusal to cure the same within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default. If Applicant's successor-in-title fails to have the Development open for business to the general public within **TWO (2)** months from issuance of a Certificate of Occupancy for the Development, the same shall not constitute an event of default under this Agreement; however, the City shall have the right to terminate this Agreement after written notice thereof to Applicant and passing of a 90-day period to cure the same. In the event this Agreement is terminated pursuant to this paragraph, the Grant Payment previously provided by the City pursuant to this Agreement shall be recaptured and repaid in full by Applicant within sixty (60) days from the date of such termination.
- C. **Property Value.** If at any time while the Applicant owns the Property the assessed taxable value is less than \$1,800,000.00, the same shall be deemed an event of default. If, during the term of this Agreement and while the Property is owned by a party other than Applicant, the assessed taxable value is less than \$1,000,000.00, then the same shall be deemed an event of default. In the event this Agreement is terminated pursuant to this paragraph, the Grant Payment previously provided by the City pursuant to this Agreement shall be recaptured and repaid in full by Applicant within sixty (60) days from the date of such termination.
- D. **False Statements.** In the event the Applicant knowingly and intentionally provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished by the Applicant, and Applicant fails to cure same within thirty (30) days after written notice from the City describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise

of all due diligence, and Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this paragraph, the Grant Payment previously provided by the City pursuant to this Agreement shall be recaptured and repaid in full by Applicant within sixty (60) days from the date of such termination.

- E. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.
- F. **Property Taxes.** In the event Applicant allows the property taxes for the Property, while owned by Applicant to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default.
- G. **Other Defaults.** Failure of Applicant or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, and Applicant or City fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicant or City also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.
- H. **Failure to Cure.** If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement may be terminated by the City and the City's obligations shall end at that time. Upon such termination, the City shall have the right to recapture any Grant payment made to Applicant, including the right to bring suit for such recapture. The City's termination of this Agreement and recapture of Grant payments made to Applicant shall be the City's sole and exclusive remedy in the event of any default, after failure to cure, by Applicant.

In addition, if any Event of Default by the City shall occur, and the City fails to cure same within thirty (30) days of receipt of written notice of default, then Applicant shall have the right to bring a suit for specific performance, subject to the provisions of the following sentences. The City has waived immunity from suit only for specific performance of the payment of the Grant payment (including the processing by the City of the Grant Payment as required by Section 5 above) where in accordance with the terms of this Agreement. The waiver is limited to specific performance only and the parties agree that the City has not consented to waiver of suit for any other purposes or any causes of action seeking legal or equitable relief including, but not limited to: interest, consequential damages, exemplary damages, court costs or attorney's fees.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement and supersedes all prior agreements, communications and understandings, if any, relating to the matters described herein. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Assignment of Applicant's Rights.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant payment without the City's prior written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. **Applicant's Sale or Transfer of the Development.** The City acknowledges notification of Applicant's intent to sell the Property to Wal-mart Stores, Inc, its subsidiary or an affiliate and the City is deemed to have notice of the anticipated sale. If Applicant

intends to sell the Property to any other party, prior to the sale or other transfer of ownership rights in the Property, Applicant shall notify the City in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an event of default.

- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same. This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns.
- F. **Completion of Site Preparation Work.** As consideration for the agreements of the City as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Site Preparation Work and that the same will be in accordance with all applicable federal, state and local laws and regulations.
- G. **Confidential Information.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant prior to the release of any such information, if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not

liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.

- J. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date upon which both parties have fully executed this Agreement.
- K. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- L. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, governmental action not reasonably within the control of the party or party's agent (unless caused by the intentionally wrongful acts or omissions of the party) or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- M. **Headings and Construction.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural, and to the plural the singular.
- N. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction or operation of any portion of the Development.
- O. **No Third Party Beneficiaries.** This Agreement is not intended to confer any, rights, privileges, or causes of action upon any third party.
- P. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below or by hand-delivery with signed receipt. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
City Manager
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Economic Development Department Director
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: Rivera Oaks Properties, Ltd
106 Mesa Park Drive
El Paso, Texas 79912

Copy To: Gordon, Davis, Johnson & Shane, PC
4695 North Mesa
El Paso, Texas 79912

- Q. **Ordinance Applicability.** This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- R. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.


(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day
of _____, 20__.

CITY OF EL PASO, TEXAS


Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Planning and Economic Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____,
20__, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

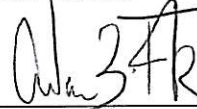
My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPLICANT:

RIVER OAKS PROPERTIES, LTD.,
a Texas limited partnership

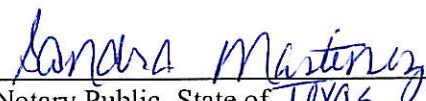
By: River Oaks Asset Management, Inc.,
a Texas corporation,
General Partner

By: 
~~Gerard L. Rubin~~, President
Adam Z. Frank,

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

Adam Z. Frank
This instrument was acknowledged before me on the 3 day of November,
2010, by ~~Gerard L. Rubin~~, President of River Oaks Asset Management, Inc., a Texas
corporation, General Partner of **River Oaks Properties, Ltd.**, a Texas limited partnership, on
behalf of said limited partnership (APPLICANT).


Notary Public, State of TEXAS

My Commission Expires:
August 15, 2014

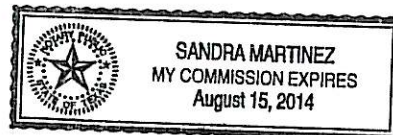


EXHIBIT "A"

DEVELOPMENT

The Development consists of performance of the Site Preparation Work and redevelopment of the Property by the development, construction and operation of a Wal-Mart facility having a minimum square footage of 83,000 of retail space, exclusive of adjacent parking facilities.

The Development will occur on the Property known and numbered as: 5631 Dyer (Parcel ID Number: L44799905002100) and 5719 Dyer (Parcel ID Number: L44799905101600), El Paso, Texas, and legally described as follows:

Blocks 50, 51, 68 and 69 and the North Half of Blocks 49 and 70 and the closed street and alley right of way adjacent to these Blocks and within the area of the Tract designated by metes and bounds hereinbelow, in LOGAN HEIGHTS ADDITION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 3, Page 46 of the Plat Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron pin at the point of intersection of the South right-of-way line of Broadus Avenue with the West right-of-way line of Dyer Street; said point of intersection also being the Northeast corner of Block 51, of the LOGAN HEIGHTS ADDITION to the City of El Paso, El Paso County, Texas;

THENCE, South 0°47' East along said West right-of-way line a distance of 780.00 feet to its intersection with the North right-of-way line of an alley 20.00 feet in width;

THENCE, South 89°13' West along said North right-of-way line a distance of 855.00 feet to its intersection with the East right-of-way line of Lackland Street;

THENCE, North 0°47' West along said East right-of-way line a distance of 780.00 feet to its intersection with said South right-of-way line of Broadus Avenue;

THENCE, North 89°13' East along said South right-of-way line a distance of 855.00 feet to the POINT OF BEGINNING, containing 15.310 acres;

Which Tract of land is situated at the Southwest Corner of the Dyer Street and Broadus Avenue intersection with its West Boundary being formed by Lackland Avenue and its South boundary being formed by a dedicated alley.

EXHIBIT "B"
Qualified Expenditures

Site Preparation Work shall consist of: demolition, removal, and proper disposal from the Property of (i) the buildings, appurtenances, including but not limited to foundations, presently situated on the Property, and (ii) all related improvements that the City has reasonably determined are necessary to render the Property to a standard developable site condition that is in conformance with all applicable federal, state, and local laws, rules, and regulations.

The parties agree that the following activities will be completed on the Property and that upon completion will satisfy the Applicant's obligation to complete the Site Preparation Work:

- Asbestos removal of all identified items as per asbestos survey by ATC Associates dated June 15, 2007
- Abatement air monitoring and project design
- Texas Department State Health Services fees
- Demolition and removal of all walls, roofs, concrete slabs and foundations, including all sidewalks, curbs, and islands adjacent to buildings (the improvements)
- Site demolition of the monument sign, all parking lot poles, including concrete bases, truck loading docks and miscellaneous fence removal
- Temporary fencing, barricades and dust control as required for the duration of the project
- Hauling of all debris generated from the demolition of the improvements
- All land fill fees associated with the scope of this work
- Stabilization of all disturbed areas from the removal of the improvements
- All permanent silt fencing as required by the SWPPP
- Temporary power and water
- Utility removal
- Demolition permits and finals as required by city, county, and state governments

[Grant Submittal Package Form]

STATE OF TEXAS
COUNTY OF EL PASO

§
§
§

CONTRACT OF SALE
(City Acquisition)

This Contract is entered into as of the ____ day of _____, 2010 by and between the **CITY OF EL PASO, TEXAS**, hereinafter referred to as the "City," and **RIVER OAKS PROPERTIES, LTD**, hereinafter referred to as "Seller."

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

Lots 1 through 10, both inclusive, Block 1, SATTERTHWAITE
ADDITION, an Addition to the City of El Paso, El Paso County, Texas;
also known and numbered as 601 N. Oregon Street, El Paso, Texas

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of ONE MILLION TWO HUNDRED SIXTY TWO THOUSAND ONE HUNDRED FOURTEEN AND 98/100 DOLLARS (\$1,262,114.98).

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1 Inspection.

(a) Subject to the provisions of Paragraph 6.1 hereinafter, the City shall complete its inspection of the Property on or before **ninety (90)** calendar days after the execution of this Contract by the City (the "Inspection Period"). For the purposes hereof, the City may complete or cause to be completed inspections of the Property by inspectors of the City's choice. Inspections may include, but shall not be limited to: (i) physical property inspections; (ii) environmental assessment or engineering study including the

performance of tests such as soils tests, water tests or air sampling. The Seller shall permit the City and the City's inspectors access to the Property at all reasonable times. In the case of any invasive testing (taking samples, etc.), the City shall provide to the Seller evidence that the consultant making such inspection carries liability insurance and is properly licensed. During the Inspection Period, the City may determine in its sole and absolute discretion whether the Property is suitable for the City's needs. In the event that the City in its sole and absolute discretion determines that the Property is not suitable for its needs, the City may terminate this Contract by delivering a written termination notice to the Seller within the Inspection Period and One Hundred and 00/100 Dollars (\$100.00), which is independent contract consideration for this right to cancel. During the Inspection Period, the Seller covenants and agrees to make available to the City the Property. Such inspection shall be conducted by the City, and permitted by the Seller, on business days during normal business hours. All information provided by the Seller to the City or obtained by the City relating to the Property in the course of its review shall be treated as confidential information by the City, to the extent allowed by federal and state law, and in the event the City terminates this Contract, the City shall provide the Seller with all reports, studies, documents and other information obtained by the City relating to the Property. To the extent allowed by Texas State law, the City shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the City, its employees, agents or representatives and the City shall repair all damages arising from or caused by the inspections.

3.2 Title Insurance. Within **thirty (30)** calendar days after the date of execution of this contract, the City at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.3 Title Objections. The City will give the Seller written notice on or before the expiration of **sixty (60)** calendar days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller may at its option promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Pre-Closing Claims.

(a) The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the

Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing.

(b) During the term of this Contract, the Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

4.2 **"AS IS, WHERE IS"**. THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE CITY ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE SELLER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY AND THE CONDITION; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE CITY MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE CITY IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE SELLER. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE SELLER AND PURCHASED BY THE CITY SUBJECT TO THE FOREGOING. The terms of this paragraph will be recited in the Deed conveying the Property at Closing.

4.3 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.4 Easements. After the Effective Date, the Seller shall not create any easement affecting the Property without the prior written consent of the City.

4.5 THE STATEMENTS MADE HEREIN ARE MADE IN RELIANCE UPON THE COMMITMENT ISSUED BY THE TITLE COMPANY AS TO MATTERS OF RECORD AND ARE LIMITED TO THE ACTS OF SELLER AS TO MATTERS NOT OF RECORD. These representations and warranties shall expire at Closing.

5. Closing. Closing. The closing of this transaction ("Closing") shall take place at the offices of the title insurer for the Property (the "Title Company") on or before **ninety (90)** calendar days after the execution of this Contract by the City.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2010 prorated through the day of closing.

5.2 Closing Costs. The following costs and expenses shall be paid as follows in connection with the Closing.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Reasonable and customary escrow fees, if any, shall be paid by the City.
- (d) Each party shall pay the fees and costs of its own counsel.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Special Warranty Deed that covenants that grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise, conveying the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above; (iv) any and all restrictions, reservations, covenants, conditions, easements, and other matters, if any, relating to the Property; and (v) all zoning laws, regulations, ordinances of municipal and/or other governmental entities.

5.4 Other Obligations. Each party shall do all other reasonable acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. Termination/Default.

6.1 Permitted Termination. If this Contract is terminated by the City pursuant to a right expressly given it to do so in this Contract, the City will give the Seller One Hundred and 00/100 Dollars (\$100.00), which is independent contract consideration for this right to cancel, and neither party shall have any further rights or obligations hereunder.

6.2 Default by the Seller.

(a) The Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(1) Any of the Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect;

(2) The Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason.

(b) In the event that the Seller shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Contract in accordance with its terms, the City may enforce specific performance of this Contract.

6.3 Default by City. In the event that City shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Contract in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive One Hundred and 00/100 Dollars (\$100.00) as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Contract, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Contract, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Contract to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller: River Oaks Properties, Ltd.
106 Mesa Park Drive
El Paso, Texas 79912

City: City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

7.2 Assignment.

(a) The City shall may assign this Contract without the express written consent of Seller. Seller may assign this Contract at its sole discretion without prior notice to, or consent of the City.

(b) Seller may consummate the sale of the Property as part of a so-called like kind or deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. Without limitation on the foregoing, Seller may, at its option, assign this Contract and any Earnest Money deposited hereunder to one or more independent third party facilitators or intermediaries who will facilitate the Exchange. Seller agrees to cooperate with the other in the perfection of such an Exchange and to execute any and all documents reasonably necessary to accomplish the same; provided, the City shall not be required to take title to any replacement property or expend funds in relation to its cooperation, nor will the time periods provided hereunder be extended.

8. Entire Agreement/Governing Law. This Contract constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Contract, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Contract shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Contract and each and every provision hereof.

8.2 Severability. If any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 Survival of Provisions. The terms contained in this Contract, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this

contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Contract shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City or its representatives is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.


(Signatures begin on next page)

The above instrument, together with all conditions thereto is hereby EXECUTED
by the Seller this day of , 2010.

SELLER:

RIVER OAKS PROPERTIES, LTD.,
a Texas limited partnership

By: River Oaks Asset Management, Inc.,
a Texas corporation,
General Partner

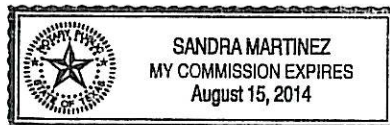
By: 

~~Gerald X. Rubin~~, President
Adam Z. Frank,

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 3 day of November, 2010, by **Adam Z. Frank,**
~~Gerald X. Rubin~~, President of River Oaks Asset Management, Inc., a Texas corporation, General
Partner of **River Oaks Properties, Ltd.,** a Texas limited partnership, on behalf of said limited
partnership.





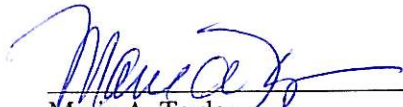
(Signatures continued on next page)

EXECUTED by the City of El Paso this ____ day of ____, 2010.

City of El Paso


By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Planning and Economic Development

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of ____, 2010 by
Joyce Wilson, City Manager of the City of El Paso.

Notary Public, State of Texas

My commission expires:
